IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.701 OF 2005

Mohd.Ishaq Dawood Tambe & ors. Petitioners

vs.

Special Land Acquisition Officer & ors. Respondents

Mr.R.S.Datar for the petitioners.

Mr.E.P.Bharucha, senior counsel along with Mr.M.V.Gopal i/b.Mr.A.S.Rao for respondent no.2.

Mr.C.R.Sonawane,A.G.P. for respondents 1 and 3.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 22nd March 2005

P.C.

The petitioners by means of this writ petition challenge the Award dated 10th January 2005 passed by the Special Land Acquisition Officer (Special Unit), Thane. The Award pertains to the acquisition of land bearing CTS Nos.2836 B(pt), 2845 (pt), 2846(pt), 2847/1, 2, 3 (pt) admeasuring 924.90 sq.mt. situated at village Kalyan. The said land is needed for the purposes of road shown in the draft development plan prepared for the city of Kalyan. It is not in dispute that provisions of Maharashtra Regional and Town Planning Act, 1966 were invoked for the acquisition of the aforesaid land.

2. The contention on behalf of the petitioners is that the publication was lastly made on 23rd April 2002 at site. It is contended that Award made on 10th January 2005 is beyond two years from the date of publication of declaration and, therefore, by virtue of Section 11-A of the Land Acquisition Act, the Land Acquisition proceedings have lapsed.

3. The learned senior counsel appearing for the respondent no.2 invited our attention to the judgment of the Apex Court in the case of State of Maharashtra & anr. v. Sant Joginder Singh Kishan Singh & ors., AIR 1995 S.C.2181 and submitted that Section 11-A of the Land Acquisition Act is not applicable to the acquisition proceedings and the acquisition of land for the town planning under the Maharashtra Regional and Town Planning Act, 1966.

4. Mr.R.S.Datar, the learned counsel for the petitioners submitted that in the case of Girnar Traders v. State of Maharashtra & ors., (2004) 8 S.C.C.505 the correctness of the decision in Sant Joginder Singh Kishan Singh has been referred to the larger Bench.

5. The Division Bench of this Court through one of us (R.M.Lodha,J.) in Yeshwant Natthuji Meshram v. State of

Maharashtra & ors., 1995 (1) Mh.L.J. 48 with reference to the question about the binding nature of the decision of the Supreme Court referred to the Larger Bench held that the decision of the Supreme Court referred to Larger Bench for consideration does not make the law already laid down not binding on the High Court till the authoritative pronouncement is delivered by the larger Bench of the Supreme Court. In paragraph 22 of the report it was observed thus:

> "22. True it is that the question whether a court can order the C.B.I., an establishment under DSPE Act, to investigate a cognizable offence committed within a State without the consent of that State Government or without any notification or order having been issued in that behalf, is referred to the larger Bench by the order of the Supreme Court dated March 10, 1989 in Haryana Mahila Sanghtan's case (supra), but the law already laid down by the Apex Court in some of its judgments relating to section 6 of the DSPE Act does not cease to be binding on the High Court. We are of the view that the decision of the Supreme Court referred to larger Bench and sought to be examined does not make the law already laid down not binding on the High Court till the authoritative pronouncement is delivered by the larger Bench of Supreme Court."

6. In our considered view, the contention raised by the learned counsel for the petitioners stands concluded against the petitioners by the decision of the Apex Court in Sant Joginder Singh Kishan Singh (cited supra) wherein it has been held that Section 11A of the Land Acquisition Act is not applicable to the acquisition proceedings and acquisition of land for town planning

under the Maharashtra Regional and Town Planning Act, 1966.

7. The learned counsel for the petitioners did not raise any other contention.

8. Writ petition does not deserve to be admitted and is dismissed in limine.

9. We record and accept the statement of Mr.E.P.Bharucha, the learned senior counsel for the respondent no.2 that for a period of four weeks from today, the status quo regarding subject matter of land shall be maintained.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)